

(2) The individual's assets do not exceed the resource base of \$3000 for an individual or \$5000 for an individual with a spouse or one dependent plus \$600 for each additional dependent. This base includes all of the claimant's assets not exempted from recoupment in paragraph (d) of this section. The first \$3000 or more depending on the number of the claimant's dependents is also exempted from recoupment.

(b) *Income.* The individual's total income includes any funds which may be reasonably considered available for his or her use, regardless of the source. Income to a spouse will not be considered available to the individual unless the spouse was living in the household both at the time the overpayment was incurred and at the time waiver is considered. Types of income include but are not limited to:

(1) Government benefits such as Black Lung, Social Security, and Unemployment Compensation benefits;

(2) Wages and self-employment income;

(3) Regular payments such as rent or pensions; and

(4) Investment income.

(c) *Ordinary and necessary living expenses.* An individual's ordinary and necessary living expenses include:

(1) Fixed living expenses, such as food and clothing, rent, mortgage payments, utilities, maintenance, transportation, insurance (e.g., life, accident, and health insurance);

(2) Medical, hospitalization, and other similar expenses;

(3) Expenses for the support of others for whom the individual is responsible.

(4) Church and charitable contributions made on regular basis. (This shall not include large one-time gifts made after receipt of the preliminary notice of overpayment); and

(5) Miscellaneous expenses (e.g., newspaper, haircuts) not to exceed \$25.00 per month.

(d) *Assets.* An individual's assets include:

(1) Liquid assets—cash on hand, the value of stocks, bonds, savings accounts, mutual funds, and the like; and

(2) Non-liquid assets—the fair market value of property such as a camper, second home, extra automobile, jewelry, etc.

Assets for these purposes shall not include the value of household furnishings, wearing apparel, family automobile, burial plot or prepaid burial contract, a home which the person maintains as the principal family domicile, or income producing property if the income from such property has been included in comparing income and expenses.

§ 10.323 Waiver of recovery—against equity and good conscience.

(a) Recovery of an overpayment is considered to be "against equity and good conscience" when an individual presently or formerly entitled to benefits would experience severe financial hardship in attempting to repay the debt. The criteria to be applied in determining severe financial hardship are the same as in § 10.322.

(b) Recovery of an overpayment is considered to be inequitable and against good conscience when an individual, in reliance on such payments or on notice that such payments would be made, relinquished a valuable right or changed his position for the worse. In making such a decision, the individual's present ability to repay the overpayment is not considered. To establish that a valuable right has been relinquished, it must be shown that the right was in fact, valuable; that it cannot be regained; and that the action was based chiefly or solely on reliance on the payments or on the notice of payment. To establish that the individual's position has changed for the worse, it must be shown that the decision made would not otherwise have been made but for the receipt of benefits, and that this decision resulted in a loss. An example of such "detrimental reliance" would be a decision to enroll in college based on the award of benefits. The funds have been spent and cannot be recovered nor can the purchase be liquidated.

§ 10.324 Responsibility for providing financial information.

In requesting waiver of an overpayment, either in whole or in part, the overpaid individual has the responsibility for providing the financial information described in § 10.322, as well as

such additional information as the Office may require to make a decision with respect to waiver. Failure to furnish the information within 30 days of request shall result in denial of waiver, and no further requests for waiver shall be entertained until such time as the requested information is furnished.

Subpart E—Furnishing Medical Treatment

§ 10.400 Physician and medical services, etc. defined.

(a) The term “physician” as used in subparts E and F of this part includes physicians (M.D. and D.O.), surgeons, podiatrists, dentists, clinical psychologists, optometrists, and chiropractors, within the scope of their practice as defined by State Law. The term “physician” includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by X-ray to exist. A physician whose license to practice medicine has been suspended or revoked by a State licensing or regulatory authority is not a physician within the meaning of this section during the period of such suspension or revocation.

(b) The term “duly qualified physician” as used in subparts E and F of this part includes any physician, as defined by paragraph (a) of this section, who has not been excluded under the provisions of subpart F of this part. Except as otherwise provided by regulation, a duly qualified physician shall be deemed to be designated or approved by the Office.

(c) The term “duly qualified hospital” as used in subparts E and F of this part includes any hospital licensed as such under State law which has not been excluded under the provisions of subpart F of this part. Except as otherwise provided by regulation, a duly qualified hospital shall be deemed to be designated or approved by the Office.

(d) The term “duly qualified provider of medical support services or supplies” as used in subparts E and F of this part includes any person, other than a physician or a hospital, who provides services, drugs, supplies, and appliances for which the Office makes

payment who possesses any applicable licenses required under State law and who has not been excluded under the provisions of subpart F of this part.

(e) The term “medical services” as used in subparts E and F of this part includes services and supplies provided by or under the supervision of physicians (M.D. and D.O.), surgeons, podiatrists, dentists, clinical psychologists, optometrists, and chiropractors, within the scope of their practices as defined by State law. Reimbursable chiropractic services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-rays to exist. Also included for payment or reimbursement are physical examinations (and related laboratory tests) and x-rays performed by or required by a chiropractor to diagnose a subluxation of the spinal column. The term “subluxation” means an incomplete dislocation, off-centering, misalignment, fixation or abnormal spacing of the vertebrae anatomically which must be demonstrable on any x-ray film to individuals trained in the reading of x-rays. A chiropractor may interpret his or her x-rays to the same extent as any other physician defined in this section.

(f) The term “hospital services” as used in subparts E and F of this part includes services and supplies provided by hospitals within the scope of their practice as defined by State law.

(g) The term “medical support services and supplies” as used in subparts E and F of this part includes services, drugs, supplies, and appliances provided by a person other than a physician or hospital.

(h) The term “job-related injury” as used in subparts E and F of this part includes injuries sustained while in the performance of duty and diseases proximately caused by the conditions of employment.

(i) The term “designated agency official” means the individual delegated responsibility by an employing agency for authorizing medical treatment for the injured employee.

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